

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TIMOTHY HARRISON,

Petitioner,

v.

MICHAEL OBENLAND,

Respondent.

CASE NO. C13-5839 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 20), and Petitioner Timothy Harrison’s (“Harrison”) objections to the R&R (Dkt. 21).

On December 30, 2013, Judge Creatura issued the R&R recommending that the Court dismiss Harrison’s petition as time barred because the petition was untimely and Harrison had failed to provide any reason for equitable tolling. Dkt. 20. On January 21, 2014, Harrison filed objections stating that he received Respondent’s answer late and did not have time to reply and that he exhausted his state remedies on December 4, 2012. Dkt. 21. Although Harrison filed this petition within a year of the December 4, 2012 Certificate of Finality, Harrison fails to address the period of time between the denial of

1 his petition for discretionary review of his direct appeal and the filing of his personal
2 restraint petition. Including this period of time in the calculation, Harrison had ninety-
3 seven days after December 4, 2012 to file his petition and he failed to do so. Therefore,
4 Harrison's petition is time barred.

5 With regard to equitable tolling and the issue of receiving Respondent's answer
6 too late to reply, Harrison had the opportunity to include facts in support of tolling in his
7 objections to the R&R and he failed to do so. Therefore, Harrison failed to meet his
8 burden to show that equitable tolling is applicable in this case because the record is silent
9 on this issue.

10 The Court having considered the R&R, Petitioner's objections, and the remaining
11 record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) Harrison's petition is **DISMISSED** as time barred; and
- 14 (3) Harrison is **DENIED** a Certificate of Appealability.

15 Dated this 10th day of March, 2014.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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